

Application Number: 10/561,705
Amendment Dated: March 12, 2009
Reply to Office Action Dated: September 12, 2008

REMARKS

This amendment is responsive to the Office Action dated January 6, 2009 for which a three (3) month period of response was given. A Petition and fee for a three (3) month extension of time accompany this paper. No additional claim fees are believed to be due. However, should further extensions of time and/or additional claim fees be due, the Commissioner is hereby authorized to treat this paper as a Petition for any needed extension of time and to charge any fees due to Deposit Account No. 50-0959, Attorney Docket No. 089498.0482.

Claims 1 through 18 are pending in the present application. In view of the above, entry and consideration of the remarks which follow is believed due and is respectfully requested.

I. The Non-Statutory Obviousness-Type Double Patenting Rejections:

Claims 1 through 9 and 12 through 16 have been rejected under the judicially created doctrine of obviousness-type double patenting over claims 1 through 17 of United States Patent No. 6,852,804 (which is a co-owned patent by The University of Akron).

With regard to the obviousness-type double patenting rejection, a Terminal Disclaimer executed by Joseph J. Crimaldi (attorney-of-record, as listed in the second oath filed in the present application) is enclosed herewith. The Commission is hereby authorized to charge the Terminal Disclaimer fee under 37 C.F.R. § 1.20(d) to Deposit Account No. 50-0959, Attorney Docket No. 089498.0482.

In light of the enclosed Terminal Disclaimer, it is believed that the obviousness-type double patenting rejections of claims 1 through 9 and 12 through 16 over United States Patent No. 6,852,804 has been rendered moot. As such, withdrawal of this obviousness-type double patenting rejection is believed due and is respectfully requested.

Claims 1 through 18 have been rejected under the judicially created doctrine of obviousness-type double patenting over claims 1 through 17 of United States Patent No. 6,852,804 (which is a co-owned patent by The University of Akron) in view of United States Patent No. 5,179,171 (Minami et al.).

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With regard to the obviousness-type double patenting rejection as it relates to United States Patent No. 6,852,804, a Terminal Disclaimer executed by Joseph J. Crimaldi (attorney-of-record, as listed in the second oath filed in the present application) is enclosed herewith. The Commission is hereby authorized to charge the Terminal Disclaimer fee under 37 C.F.R. § 1.20(d) to Deposit Account No. 50-0959, Attorney Docket No. 089498.0482.

In light of the enclosed Terminal Disclaimer, it is believed that the obviousness-type double patenting rejections of claims 1 through 18 over the combination of United States Patent Nos. 6,852,804 and 5,179,171 has been rendered moot. As such, withdrawal of this obviousness-type double patenting rejection is believed due and is respectfully requested.

II. The 35 U.S.C. § 102(e) Rejection:

Claims 1 through 9 and 12 through 16 have been rejected under 35 U.S.C. § 102(e) over United States Patent No. 6,852,804 (Kennedy et al.). As noted by the Examiner the present patent application and issued United States Patent No. 6,852,804 share common inventorship. Given this, the undersigned attaches hereto a Declaration Under 37 C.F.R. § 1.131 by Joseph P. Kennedy. In the attached Declaration, Dr. Kennedy attests to the fact that the subject matter of the current patent application was indeed invented by himself and co-inventor Peetz. Additionally, as is also stated by Dr. Kennedy, the related subject matter disclosed in United States Patent No. 6,852,804 is not an invention "by another" as defined under 35 U.S.C. § 102(e) since such subject matter was the inventive work of only Kennedy and Peetz (the present application's co-inventors).

Given this, any subject matter of a related nature that is disclosed in United States Patent No. 6,852,804 is not an invention "by another" as defined under 35 U.S.C. § 102(e), and thus the rejection of claims 1 through 9 and 12 through 16 over United States Patent No. 6,852,804 is now moot. As such, withdrawal of the pending 35 U.S.C. § 102(e) rejection of claims 1 through 9 and 12 through 16 is believed due and is respectfully requested.

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III. Conclusion:

Accordingly, reconsideration and withdrawal of the pending obviousness-type double patenting rejections and the 35 U.S.C. § 102(e) rejection of claims 1 through 18 is respectfully requested.

For at least the foregoing reasons, all of the claims, claims 1 through 18, of the present application are believed to be in condition for allowance, and a Notice of Allowance is respectfully requested.

Should the Examiner wish to discuss any of the foregoing in more detail, the undersigned attorney would welcome a telephone call.

Respectfully submitted,



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March 12, 2009

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